THE HON'BLE SRI JUSTICE C.V. RAMULU

Tuesday, the 3rd day of April,2007

W.P.No.18377 of 1996

Between:-

Dr. D. Rajanikanth & others … Petitioners

and

General Insurance Corporation
of India, represented by its
Chairman, 'Suraksha', 170, J.Tato
Road, Church Gate, Mumbai-400 020
and others … Respondents

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ORDER:

This Writ Petition is filed seeking a Mandamus directing the respondents to accord permission for the petitioners to undertake Veterinary practice on a part-time basis and in the event of any inability to accord such permission, direct the respondents to grant non-practicing allowance as a measure of compensation, on the same scales, as was decided by the Ministry of Finance, Government of India in that regard.

It appears, petitioners are all qualified Veterinarians having studied and obtained B.V.Sc/M.V.Sc degree. They have the advantage of gaining experience either by privately practicing veterinary profession or having been associated with frontline organizations, which had direct bearing with the professional activity. Thus, having gained experience of number of years as Veterinarians, petitioners are attracted towards the policy of recruitment of Veterinarians (as Specialist Officers) in the General Insurance Industry, for which a decree in Veterinary Science is the basic requisite qualification coupled with field experience. Indian Parliament enacted the General Insurance Business (Nationalization) Act,1972 (Central Act 57 of 1972) to provide for acquisition and transfer of shares of Indian Insurance companies and undertakings of the existing insurers with a view to serve better the needs of the economy by securing the development of general insurance business in the best interests of the

community. The growth of the industry after the nationalization of general insurance business in the year 1973 has been phenomenon. From a premium income of about Rs.1610 million to start with the industry has done by 1995 over Rs.10,000 million. Though the concentration of the business has been always around urban centres, after Nationalization with the accent on taking the message of insurance to the rural areas and to serve the common man, newer types of insurance covers were devised. Thus, the non-traditional class of business was born. The principal business in non-traditional sector is cattle and other rural insurance business. The following are the different types of this class of insurance:

1. Milch animals
2. Bullocks
3. Female calves/Heifers
4. Stud bulls
5. Sheep and Goats
6. Pigs
7. Camels
8. Elephants
9. Mules and Yaks
10. Poultry
11. Ducks
12. Inland Fish
13. Silk worms
14. Honey bee and others

One of the important functions that the insurance companies undertake is to insure livestock and poultry including various other assets of rural farmers forming part of the beneficial schemes. For that purpose, the insurance companies need the services of qualified Veterinarians to *inter alia* perform the services like assessment of the quality of the livestock and poultry and their insurance worthiness, animal husbandry management and loss prevention. The specialized knowledge possessed by the candidates is also put to use for

providing veterinary services to the livestock as well as the poultry industry. The Veterinary Officer as an employee of the insurance company would not only help the organization in its appropriate assessment, but would also be ensuring adequate and proper care being bestowed on the subjects covered at the other end. In this view of the matter, the Veterinary Officer, though recruited to the specialist cadre, is as much a part of the organizational set up of the insurance company as any other trained general insurance officer. The contribution of these small, but specialized cadre of Veterinary Officers for the growth of the rural insurance schemes, is in no small measure.

In accordance with the provisions of the Veterinary Council Act,1984, which is an enactment of the Parliament, all qualified veterinarians upon being registered with the respective councils shall be entitled to practice veterinary profession privately. The said Act is intended to regulate veterinary practice and for that purpose, establish Veterinary Council of India and State Councils and also maintain registers of the veterinary practitioners. No person, other than a registered veterinary practitioner, shall hold office as veterinary physician or surgeon or any other like office in Government or in any institution managed by local or other authority. Likewise, no person other than a registered veterinary practitioner shall practice veterinary medicine in any State. The professional conduct of the veterinary practitioner can be regulated by the Veterinary Council and the Regulations made in that behalf may specify which violation thereof shall constitute misconduct in any professional respect and the effect thereof. Thus, it is clear that such of those candidates, who possess the requisite qualification, are entitled to have their names registered with the Veterinary Council and thereupon have the privilege to practice the Veterinary medicine. As part of their practice, they are also entitled to recover the fee payable

therefor. The restrictions upon a professional conduct can be laid down by way of regulations to be framed by the Veterinary Council.

It is the case of the petitioners that the Veterinary Officers appointed by the General Insurance Corporation are not being allowed to practice veterinary medicine. The Veterinary Council has not imposed any restriction in its conduct regulations that those Veterinarians, who are employed with the General Insurance Corporation of India or its subsidiary companies, cannot undertake part-time professional practice. Such of those veterinary practitioners, who are in service of the State or the Central Government are allowed to undertake private practice on part-time basis so long as the activity of the private practice does not come in the way of veterinary surgeons in discharging their official duties. The premier research institute i.e., Indian Council of Agricultural Science, New Delhi employs a good number of veterinarians as part of their research team. Those veterinarians are paid non-practicing allowance in terms of the Memo dated 29-9-1988 of the Ministry of Finance, New Delhi. Similarly, the Ministry of Agriculture and Rural Development had accepted the recommendation for payment of non-practicing allowance to it's employees, who possess veterinary qualification and who have not been permitted to practice their profession. Thus, looked from any angle, wherever the veterinarians, who possess the qualifications prescribed in the First or Second Schedule of Act 52 of 1984, have been prevented from indulging in the privilege of practicing their profession, are being compensated by way of non-practicing allowance. It is only fair and proper that the General Insurance Corporation of India should also compensate the veterinarians by way of payment of non-practicing allowance, for, they are not permitting the qualified veterinarians in their service from practicing their profession;

failure to pay non-practicing allowance is, therefore, totally arbitrary, unfair and unreasonable.

A detailed counter affidavit has been filed by the 1st respondent denying the allegations made by the petitioners. It is stated that by virtue of certain provisions in the General Insurance Business (Nationalization) Act, the Government notifications, ministerial communications etc., are not applicable to the respondent-Corporation, unless specifically adopted for implementation in the industry. The Memorandum dated 29-9-1988 issued by the Ministry of Finance, Government of India, New Delhi has no application to the case of the petitioners, since it was not adopted by the General Insurance Corporation. Therefore, the petitioners are not entitled for non-practicing allowance nor they are permitted to do private practice.

Heard both sides.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and gone through the entire material made available on record.

The bone of contention of the petitioners is that they are all medical practitioners (veterinarians) registered with the Veterinary Council of India; therefore, they are entitled to have private practice without causing any disturbance to the work undertaken by them as Officers of the General Insurance Corporation of India. In case they are not permitted to do private practice, they should be allowed to draw non-practicing allowance as is applicable to the State and Central Government veterinary Doctors as per the Memo No.I(30)/IC/86 dated 29-9-1988 of the Ministry of Finance, Department of Expenditure, Implementation Cell, New Delhi.

Whereas, according to the respondent-Insurance companies that the Memorandum dated 29-9-1988 is not automatically applicable to

the service conditions of the petitioners unless and until they are adopted by a resolution passed by the Board of the Insurance Corporation and the said Memo was never adopted by the respondent-Corporations. Petitioners are bound by the conditions of their employment. They were never promised or permitted to have private practice and the respondent-companies have considered the whole subject matter in a proper perspective keeping in view the interests of the Corporation and its subsidiary companies. They are not under any obligation to give detailed reasons for rejecting the request of the petitioners, as they are not performing any disciplinary or appeal functions. Petitioners cannot make any comparison with the payment of non-practicing allowance by the Government of India, since the service conditions of the employees of the Government Departments and the insurance company are entirely different and independent of each other and it is not necessary to adopt the same policies as are applicable to the Government Departments; therefore, the petitioners cannot compare themselves with such Departments. Thus, there is no discrimination in non-payment of non-practicing allowance. There is nothing unfair, arbitrary or unreasonableness on the part of the respondent-companies in denying the non-practicing allowance to the petitioners or not permitting them to do private practice.

The petitioners have no right whatsoever to do private practice or claim non-practicing allowance. When they are employed in the respondent-companies, they are bound by the service conditions of the General Insurance Corporation of India. Simply because their names were registered with the Veterinary Council of India, they are not automatically entitled to have private practice. In the counter, it is categorically stated that allowing to do private practice by the petitioners will adversely affect the discharge of their official duties, as

it will create dichotomy of interest towards the petitioners' employers and their clients, who would well be insuring their livestocks with the respondent-companies and if the petitioners are permitted to do private practice, public interest will be jeopardized. The petitioners, having accepted the employment under the respondent-companies, cannot claim, as a matter of right, to do private practice. Petitioners could not have compared themselves either with the Veterinary Officers working with the State or Central Government Departments and sought for non-practicing allowance on par with them. It is not the case of the petitioners that the service conditions of the employees of respondent-insurance companies and the employees of Government Departments are identical except in the matter of non-practicing allowance. Admittedly, the respondent-companies have never adopted the Government pay scales and the benefits offered to the Government employees. There is no vested right in the petitioners to seek permission to do private practice or claim the non-practicing allowance. Therefore, the Writ Petition is devoid any merit and is liable to be dismissed.

Accordingly, the Writ Petition is dismissed. No order as to costs.

03-4-2007

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After pronouncing the Judgment, Sri Abhinand Kumar Shavali, learned counsel for the petitioners, made a mention stating that this Court may make it clear that this Order will not come in the way of the petitioners in making a fresh representation and further, it may not come in the way of the respondents in disposing of the same.

In the circumstances, it is made clear that this order will not

preclude the petitioners from approaching the respondents for reconsideration of their case for sanction of non-practicing allowance as per the Office Memorandum dated 29-9-1988 issued by the Ministry of Finance, Government of India, New Delhi.

03-4-2007